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SECRETARY SHAW AND PRECEDENTS AS TO TREASURY CONTROL OVER THE MONEY MARKET

The year 1906 was marked in the United States by a widespread discussion of the currency problem, which may be said to have culminated in the proposal made by the secretary of the treasury in his annual report for the year 1906, as follows:

If the secretary of the treasury were given \$100,000,000 to be deposited with the banks or withdrawn as he might deem expedient, and if in addition he were clothed with authority over the reserves of the several banks, with power to contract the national bank circulation at pleasure, in my judgment no panic as distinguished from industrial stagnation could threaten either the United States or Europe that he could not avert. No central or government bank in the world can so readily influence financial conditions throughout the world as can the secretary of the treasury under the authority with which he is now clothed.¹

This recommendation is a logical outcome of the recent practice of the Treasury in coming to the "relief" of the money market. Secretary Shaw is not the first of Treasury officials who have wished the Treasury to assume the function of regulating the money market of the country. In the *Treasury Report* for 1872 Secretary Boutwell set forth the belief that to the Treasury rather than to the banking institutions of the country should be intrusted the power of regulating the amount of currency needed in the transaction of business, in the following words:

¹ *Treasury Report*, 1906, p. 55.

As the circulation of a bank is a source of profit, and as the managers are usually disposed to oblige their patrons by loans and accommodations, it can never be wise to allow banks or parties who have pecuniary interests at stake to increase or diminish the volume of currency in the country at their pleasure. . . . Upon these views I form the conclusion that the circulation of the banks should be fixed and limited, and that the power to change the volume of paper in circulation, within limits established by law, should remain in the Treasury Department.²

In accordance with this theory, under Secretary Boutwell, and his immediate successor, the Treasury did exercise this power by increasing the amount of United States notes in circulation, as a means of relief to the monetary situation. It is in connection with these instances that attention is here directed, in the belief that they throw some light on the results of Treasury interference with the money market, and on the wisdom or unwisdom of vesting in the secretary of the treasury a regulative discretion over the operations of the national banking institutions of the country.

In connection with the quotation already made, Secretary Shaw says further:

If it be said that such power, augmented with the authority which I have outlined, would be dangerous, I reply that no man has yet been at the head of the Treasury Department, and no man is likely to occupy that position in whose hands such authority would not be safe. The best financial advice on earth is at his command, and the selfishness or unselfishness of the advice tendered, and, therefore, the value thereof, can be readily weighed.³

In the two instances given in this paper—one of which has become historic—the secretary of the treasury did exercise discretion over the circulation, and the statement that there has been no secretary in the past in whose hands the power asked for by Mr. Shaw would have been misused, should be tested by these instances.

The Act of February 25, 1862, in providing for the issue of \$150,000,000 of United States notes, contained the following provision as to their reissue:

and such United States notes shall be received the same as coin, at their par value, in payment for any loans that may be hereafter sold or negotiated

² *Treasury Report*, 1872, p. xx.

³ *Treasury Report*, 1906, p. 55.

by the secretary of the treasury, and may be reissued from time to time as the exigencies of the public interests shall require.⁴

The Act of July 11, 1862, in authorizing a further issue of \$150,000,000 of United States notes, provided that United States bonds might be exchanged for such notes, and that the secretary of the treasury

may reissue the notes so received in exchange; may receive and cancel any notes heretofore lawfully issued under any act of Congress, and in lieu thereof issue an equal amount in notes such as are authorized by this act.

Further, all the provisions of the Act of February 25, 1862, so far as the same can or may be applied to the provisions of this act, and not inconsistent therewith, shall apply to the notes hereby authorized to be issued.⁵

The Act of March 3, 1863, authorized a third issue of \$150,000,000 of United States notes, including the \$100,000,000 of such notes authorized by joint resolution on January 17, 1863. The provisions for reissue were as follows:

and any of the said notes, when returned to the Treasury, may be reissued from time to time as the exigencies of the public service may require. And in lieu of any of said notes, or any other United States notes, returned to the Treasury, and canceled or destroyed, there may be issued equal amounts of United States notes, such as are authorized by this act.⁶

These three acts, it will be seen, authorize the reissue of United States notes as "the exigencies of the public interest may require." The notes authorized by them were not regarded as a minimum which must be maintained in circulation, but as a maximum below which the amount might be reduced to any degree by retaining them in the Treasury when received in exchange for bonds or treasury notes, or paid in as ordinary receipts. Indeed, unless required by the "exigencies of the public interest," there was no authority for their reissue. And it was supposed at the time of the passage of the acts that the necessity for their remaining in circulation would disappear with the restoration of peace.

The Act of June 30, 1864, which authorized the issue of

⁴ 12 *Statutes at Large*, p. 345.

⁵ *Ibid.*, p. 532.

⁶ *Ibid.*, p. 709.

\$400,000,000 of bonds and treasury notes, contained the following provision :

nor shall the amount of United States notes, issued or to be issued, ever exceed \$400,000,000, and such additional sum, not exceeding \$50,000,000, as may be temporarily required for the redemption of temporary loan.⁷

This was a distinct pledge that the amount should never be increased beyond the sum already authorized. It cannot, however, be interpreted as meaning that this amount was a minimum which could not be decreased. The intent of the act was entirely in the other direction—to give assurance that the present amount was a maximum, which would be strictly observed.

In regard to the \$50,000,000 provided as a reserve for the redemption of temporary loan, it was enacted that the United States notes,

so held in reserve, shall be used only when needed, in his [the secretary's] judgment, for the prompt payment of such deposits on demand, and shall be withdrawn and placed again in reserve as the amount of deposits shall again increase.⁸

This was a direct warrant to the secretary to withdraw from circulation the entire \$50,000,000 whenever the temporary loans should have been paid off in full. Certainly no further legislation was needed to effect a reduction of the currency to this amount.

In his report of 1865, Secretary McCulloch stated the amount of United States notes to be on October 31, \$428,160,569. He placed the currency question foremost in the report, and took strong ground against the continuance of an irredeemable paper currency. In discussing the acts under which United States notes had been issued, he said :

He [the secretary] is of the opinion that not only these [legal tender] provisions, but the acts also, should be regarded as only temporary, and that the work of retiring the notes which have been issued under them should be commenced without delay, and carefully and persistently continued until all are retired.⁹

⁷ 13 *Statutes at Large*, p. 218.

⁸ *Ibid.*

⁹ *Annual Report*, Secretary of the Treasury, 1865, p. 5.

The restoration of specie payments was of prime importance, and, in order to effect this end, it was urged that contraction of the paper currency was indispensable.

The secretary was not able, however, to proceed far upon the policy of contraction without further legislation. The currency, he said, could not be contracted to any considerable extent save by the sale of bonds.¹⁰ The Act of June 30, 1864, providing for the issue of \$400,000,000 of bonds and treasury notes, had authorized the secretary of the treasury to

redeem and cause to be canceled and destroyed any treasury notes or United States notes heretofore issued under authority of previous acts of Congress, and substitute, in lieu thereof, an equal amount of treasury notes such as are authorized by this act.¹¹

The amount of treasury notes authorized by this provision was limited to \$400,000,000, which was precisely the amount of United States notes outstanding in excess of those issued for redemption of temporary loan.¹² This act gave the secretary power to fund the United States notes into treasury notes, which were in turn fundable into bonds.¹³ It was, however, a permission, not a direction, to do so, and there was small probability, while the war continued, that the funding would be carried out. But by the date of Secretary McCulloch's first report practically the entire amount of bonds and notes authorized by the act had been issued, and there was no distinct legislation authorizing him to retire or fund the United States notes. He recommended, therefore, that he be authorized to sell bonds, bearing not more than 6 per cent. interest, for the purpose of retiring United States notes, as well as compound interest notes.¹⁴

The views of the secretary received a hearty indorsement by the House of Representatives, which promptly acted upon the report by passing the following resolution on December 18, 1865:

Resolved, That this House cordially concurs in the views of the secretary in relation to the necessity of a contraction of the currency, with a view

¹⁰ *Ibid.*, p. 12.

¹¹ *13 Statutes at Large*, p. 218.

¹² The withdrawal of these \$50,000,000, as already seen, was provided for by their being set apart as a reserve.

¹³ Sec. 2, Act of June 30, 1864, to provide ways and means (*13 Statutes at Large*, p. 218).

¹⁴ *Report of Secretary of the Treasury*, 1865, p. 14.

to as early a resumption of specie payments as the business of the country will permit; and we hereby pledge co-operative action to this end as speedily as practicable.¹⁵

The overwhelming majority of 144 to 6 by which this resolution was adopted gave promise that Congress was about to put into execution a policy in accordance with the secretary's recommendation. That any contraction of the currency, however, would be opposed, despite this seeming agreement, soon appeared.

On February 1, 1866, Mr. Morrill, of the Ways and Means Committee, reported to the House of Representatives a financial bill by which the Act of March 3, 1865, was extended and construed so as to authorize the secretary of the treasury to fund any of the government obligations, whether bearing interest or not, into bonds, and to sell bonds in the United States or abroad in exchange for lawful money, treasury notes, certificates of indebtedness, certificates of deposit, or other representatives of value, which have been or which may be issued under any act of Congress, the proceeds thereof to be used only for retiring treasury notes or other obligations issued under any act of Congress; but nothing herein contained shall be construed to authorize any increase of the public debt.

This provided for the funding of all the short-time obligations of the government, including the United States notes. The secretary would have complete power to contract the paper currency at his discretion, no limitation as to amount being placed upon him. The opponents of contraction took instant alarm, and a vigorous opposition to any reduction of the currency developed, which was surprising in view of the attitude so recently taken by Congress. An attempt was made to limit retirement to interest-bearing obligations. The arguments against contraction which later became so familiar were brought out in the debate. But the point wished to be here emphasized is that it was understood by all that contraction of the currency was authorized,¹⁶ and this feature of the bill met strong objections. The opponents of contraction finally succeeded in adding the following proviso:

¹⁵ *Congressional Globe*, Thirty-ninth Congress, First Session, p. 75.

¹⁶ See remarks of Messrs. Wentworth, Pike, Price, Allison, Boutwell, Stevens, Darling, and Conkling in House of Representatives, March 15, 1866 (*Congressional Globe*, Thirty-ninth Congress, First Session, Part 2).

Provided, that of United States notes not more than ten millions of dollars may be retired and canceled within six months from the passage of this act, and thereafter not more than four millions of dollars in any one month.

In this form it left the House and was passed by the Senate, although there was considerable opposition to the power of contraction allowed to the secretary. It was clearly understood that reduction of the currency would result from the act. Said Senator Cowan: "He [the secretary] can only retire to the amount of \$34,000,000 in the year, and those are to be retired and canceled and put out of existence."¹⁷ On April 9 the bill passed the Senate and received the signature of the President on April 12. This act was a disappointment to the secretary, because of the limitation placed upon him as to contraction.¹⁸ The growing hostility in Congress and in the country to contraction prevented him from using his authority even to the extent authorized.

The reduction of United States notes under this act may be seen from the following statements of the public debt:¹⁹

April 1, 1866	\$422,749,252
May 1, 1866	415,164,318
June 1, 1866	402,128,318
August 1, 1866	400,361,728
September 1, 1866	399,603,592
October 1, 1866	399,165,292
November 1, 1866	390,195,785
December 1, 1866	385,441,849
January 1, 1867	380,497,842
February 1, 1867	381,427,090
March 1, 1867	376,235,626
April 1, 1867	375,417,249
May 1, 1867	374,247,687
June 1, 1867	373,209,737
August 1, 1867	369,164,844
September 1, 1867	365,164,844
October 1, 1867	361,164,844
November 1, 1867	357,164,844
December 1, 1867	356,212,437
January 1, 1868	356,159,217
February 1, 1868	356,159,127

¹⁷ Senate, April 9, 1866 (*Cong. Globe*, Thirty-ninth Congress, First Session, Part 2, p. 1853).

¹⁸ *Treasury Report*, 1866, pp. 8, 9.

¹⁹ Taken from *New York Commercial and Financial Chronicle*.

Any further reduction of the United States notes was stopped by the Act which became a law February 4, 1868, providing: that from and after the passage of this act, the authority of the secretary of the treasury to make any reduction of the currency, by retiring or canceling United States notes, shall be, and is hereby, suspended; but nothing herein contained shall prevent the cancellation and destruction of mutilated United States notes, and the replacing of the same with notes of the same character and amount.²⁰

The measure was passed in the House on January 7, no discussion being allowed. In the Senate there was considerable discussion. In view of the claim made later of the power to reissue notes, some of the statements made while the bill was under discussion are here given:

Under the law, when a note is brought in ordinarily it may be reissued, but when it is canceled under the authority conferred by the Act of April 12, 1866, that is the end of the note; it cannot be reissued.²¹

The apprehension expressed by the senator from Vermont that, if this amendment is not adopted, the secretary of the treasury will have a right to reissue legal-tenders so as to make the whole amount \$400,000,000 again, I regard as without foundation. The law gave him the authority to issue to the amount of \$400,000,000 besides the reserve. When that amount was issued, his power was exhausted; and if it was afterward contracted down to \$350,000,000, or to any amount, he has no authority without new legislation to issue to the amount of \$400,000,000.²²

On January 13, 1868, the Senate passed the bill, and, without receiving the President's signature, it went into effect on February 4.

On February 4, 1868, the date when reduction of the green-back currency was stopped by act of Congress, there were outstanding practically \$356,000,000 of United States notes. The monthly debt statement for February 1, 1868, gives the amount as \$356,159,127.²³ Thereafter there were slight reductions from

²⁰ 15 *Statutes at Large*, p. 34.

²¹ Senator Sherman (*Congressional Globe*, Fortieth Congress, Second Session, Part 1, p. 435, January 10, 1868).

²² Senator Morton (*ibid.*, January 10, 1868).

²³ The debt statements, unless otherwise noted, are from the *New York Commercial and Financial Chronicle*.

time to time. On July 1, 1869, the amount appears in the debt statement as \$355,935,195. On August 1 it was \$356,000,000, from which point there was no change until October, 1871.

On the date last mentioned \$1,500,000 of United States notes were issued to replace that amount burned in the fire at Chicago. The burned notes were in the possession of the government depository. It was definitely known that they had been destroyed, but the new notes were put out before formal proof of their destruction had been received; hence it was technically a reissue.²⁴ The monthly debt statements show this increase, making the amount \$357,500,000, down to August 1, 1872, when the figures are once more given as \$356,000,000.

The next reissue was made in October, 1872. The debt statement for November 1, 1872, showed \$360,566,764, an increase of \$4,566,764 over the previous month. Before the debt statement had appeared, rumors were current that the secretary contemplated such action, and it was pointed out that it would be without legal authority.²⁵ When the fact of reissue became definitely known, the question of legality of reissuing retired legal-tender notes was, for the first time, brought sharply to public notice. Criticism of the action became strong, and withdrawal of the reissued notes was begun—the debt statement for December 1, 1872 showing \$358,051,256 outstanding, a reduction of \$2,515,508.

On the assembling of Congress the following resolution was adopted by the House of Representatives, December 3, 1872:

Resolved, That the secretary of the treasury be, and he is herewith, directed to inform this House, at the earliest time practicable, under what law authority is given to the secretary of the treasury to make an increased issue of legal-tender notes, as was done in October last, or at any other time, by the Treasury Department; and whether such issue was made in the legal-tender notes heretofore retired, or whether new legal-tender notes were printed for the purposes of said issue; if of the retired legal-tender notes uncanceled, then to inform this House what portion of the retired legal-

²⁴ *Senate Finance Committee Report*, No. 275, Forty-second Congress, Third Session, p. 5; see also *Practical Information concerning the Public Debt of the United States*, by William A. Richardson (2d ed., Washington, 1873), p. 40.

²⁵ *New York Nation*, October 10 and 24, 1872.

tender notes of \$44,000,000, or thereabouts, heretofore retired by operation of law, have been actually canceled, and what amount remains uncanceled. And, further, it is requested that the secretary communicate to this House all information he may possess of the manner and mode of issuing such increased amount of legal-tender notes, by whose order and for what purpose such issue was used.²⁶

In reply to this resolution, Secretary Boutwell, on December 13, 1872, transmitted a letter to the House.²⁷ He stated that the new issues were made, during his absence, by Assistant Secretary Richardson, then acting secretary:

The object of the issue was the relief of the business of the country, then suffering from the large demand for currency employed in moving the crops from the South and West. The condition of affairs then existing in the country seems to me to have warranted the issue upon grounds of public policy. (*Ibid.*, p. 1.)

The authority for the issue was found in the three legal-tender acts of February 25, 1862; July 11, 1862; and March 3, 1863. These acts, the secretary asserted, provided for a permanent circulation of \$400,000,000 of United States notes.

The cancellation and destruction of notes that have been issued by the Treasury Department has no legal effect upon the power of the department

²⁶ *House Journal*, Forty-second Congress, Third Session, p. 29. The above is a copy of the resolution as it appears in the *House Journal*. As originally introduced, the phrase "or at any other time" was not in the resolution. Mr. Garfield suggested that some such phrase be included, since it had been asserted that other issues had been made by the Treasury Department besides the one in October last. He had supposed, he said, that the October issue was an exceptional one; that it had not been the custom of the Treasury in years past, but was an innovation. He wished the resolution made broad enough to include the whole matter, whether not only in October last, but at any other time the Treasury had made issues of this sort. Mr. Randall, who had introduced the resolution, had no objection to this suggestion of Mr. Garfield, but thought one case was sufficient to test the legality of all, and did not wish "to confuse the subject or enlarge it too much." He, therefore, demanded a vote on the resolution, and it was adopted. (*Congressional Globe*, Forty-second Congress, Third Session, Part 1, p. 15). As stated above, the phrase "or at any time" is included in the *House Journal*, and also appears in the letter of reply which the secretary transmitted to the House in response to the resolution. The conflicts between the *Journal* and the *Record* may, perhaps, be explained by assuming either that something was inadvertently omitted from the latter, or that the mover of the resolution included the phrase after the discussion.

²⁷ *Executive Documents*, No. 42 (House of Representatives, Forty-second Congress, Third Session).

to reissue notes in their stead, as is apparent from the language employed in the Act of 1863, already referred to.²⁸

It will be seen that the secretary here ignores any intervening legislation between the legal-tender acts and the date of his report. No change in the legal status of the United States notes is recognized as having occurred since the passage of the third legal-tender act, although the Act of April 12, 1866, had provided expressly for a limited retirement and cancellation of them, and had remained in force until repealed by the Act of February 4, 1868.

The secretary further stated that since the Act of February 4, 1868, large sums of United States notes had been held by the Treasury Department, in excess of the \$356,000,000, as a surplus fund to meet any sudden demand upon the treasury. But, as we have seen, only one instance had previously occurred where a reissue had been made, and this was not really an addition to the amount of circulation. This reserve was, he said, the source from which the new issue was made.

This explanation was not satisfying. Criticism continued in Congress and in the press.²⁹ It was pointed out that, if any portion of the notes retired under the law of 1866 might be replaced in circulation, the entire \$44,000,000 retired under that act might be reissued. The power of increasing the currency to such an extent, especially by the addition of irredeemable paper, was rightly felt to be too great to be intrusted to any one man. It was felt, further, that there was but flimsy authority in law for the exercise of such power, and the letter of explanation from the secretary was not convincing on this point.

On January 6, 1873, the following resolution was adopted in the Senate:

Resolved, That the Committee on Finance be directed to inquire whether the secretary of the treasury has power, under existing law, to issue United States notes in lieu of the \$44,000,000 of notes retired and canceled under the Act of April 12, 1866.³⁰

²⁸ *Ibid.*, p. 2.

²⁹ See *New York Nation*, issues of November 7, December 5, 12, and 19, 1872.

³⁰ *Congressional Globe*, Forty-second Congress, Third Session, Part 1, p. 340.

During the days immediately following, Secretary Boutwell and Assistant Secretary Richardson appeared before the committee defending the legality of the issues. On January 14, 1873, the committee handed in a majority report, concluding with the following resolution:

Resolved, That in the opinion of the Senate the secretary of the treasury has not the power, under existing law, to issue United States notes for any portion of the forty-four millions of the United States notes retired and canceled under the act approved April, 12, 1866.³¹

On January 15, 1873, two members of the committee, disagreeing with the majority of the committee, submitted a minority report, with this resolution:

Resolved, That in the opinion of the Senate the secretary of the treasury has the power, under existing laws, to issue United States notes for any portion of the forty-four million dollars retired and canceled under the several laws on that subject.³²

The reasoning which led to such divergent conclusions may be worth examining. The minority report asserted, and laid stress upon the assertion, that the three legal-tender acts had given unequivocal power to the secretary to issue and reissue United States notes up to \$400,000,000. Unless that power had been taken away by subsequent legislation, it still remained. Any modification of this power must be found, if found at all, in the Acts of April 12, 1866, and February 4, 1868. The Act of 1866 did not confer any new power upon the secretary over the currency. He had the right under the legal-tender acts to retire and destroy notes, or to reissue them. The desire of the secretary to reduce the legal-tender circulation was well known, and the Act of 1866 was confined to an express limitation of his power to reduce the currency, without affecting in any way the power previously granted, of reissuing notes which had been retired.

After conferring by previous acts, and in such express and positive terms, the power to reissue notes, it would seem that, had Congress designed by the new legislation to abridge that power, appropriate words to indicate that intent would certainly have been used.³³

³¹ *Senate Reports*, No. 275, Forty-second Congress, Third Session, p. 6.

³² *Ibid.*, p. 11.

³³ *Loc. cit.*, p. 8.

The Act of 1868, the report goes on to say, was passed when any further contraction was thought to be inexpedient.

While provision is thus made against any further reduction of the currency for the time being, no language is introduced taking away or restricting the power of the secretary to issue and reissue notes within the limit originally prescribed.³⁴

The act suspended merely the power to reduce the currency, but not to expand it. The several acts, then, bear this relation to one another: The legal-tender acts authorize a maximum circulation of United States notes of \$400,000,000; below this amount reduction may be carried to any degree. The Acts of 1866 and 1868 prescribe a minimum circulation of \$356,000,000; beyond this the amount may be increased to \$400,000,000 at the discretion of the secretary. There is no conflict between the earlier and the later acts; the limits of contraction and expansion are established, while, within these limits, the power of the secretary to expand or contract is left untouched.

A decision of the United States Supreme Court is cited as upholding the view that the legislation of 1866 and 1868 did not alter the secretary's power of expansion. In the case of *Bank vs. Supervisors*,³⁵ decided in December, 1868, the chief justice said:

Under the Act of March 3, 1863, another issue of one hundred and fifty millions was authorized, making the whole amount authorized four hundred and fifty millions, and contemplating a permanent circulation, until resumption of payment in coin, of four hundred millions of dollars.

Had the later acts effected any change in the secretary's power of expanding the currency, the report urged, it would not have been overlooked by the court, since the decision was rendered subsequent to those acts. Remembering that, unless the legislation of 1866 and 1868 takes away the power of reissue given by the legal-tender acts, there is no other legislation which does so, it is clear that such power yet remains with the secretary, argued the report.

Over against this ingenious and somewhat plausible line of reasoning, the majority report pointed out that the power of

³⁴ *Ibid.*, p. 8.

³⁵ 7 *Wallace*, 26.

issue given by the legal-tender acts was carefully guarded, and could be exercised only if required by "the exigency of the public service." The policy of issuing such notes was regarded as dangerous, and a maximum limit was clearly set and maintained. The Act of June 30, 1864, was a distinct assurance that the amount then outstanding should never be increased.

At the close of the war the policy of the secretary to fund all short time obligations was clearly announced, and received congressional approval. But unlimited reduction of the United States notes congress was unwilling to grant; hence the Act of 1866 placed a limitation upon the extent to which reduction of these notes might be carried. The notes were to be retired by being received in exchange for bonds, and the act expressly declared that no increase of the public debt should be made in the process of reduction. On this point the report says:

To construe the act as permitting the reissue of United States notes canceled under it would allow the secretary to increase the debt in direct violation of the act. To evade the act he would only have to receive the notes in payment of a bond issued, and then cancel the notes and issue others in their place. In this way both notes and bonds would be outstanding. The plain intent of this act was to reduce and contract the currency.³⁶

The Act of 1868, continues the report, was passed when Congress had come to believe that contraction was being carried on too rapidly. The power of reduction given by the Act of 1866 was repealed, showing clearly that the reduction which had been effected under it was regarded as permanent.

If the power to reissue had been a power coexisting with that of retiring, it is evident the Act of February 4, 1868, was unnecessary, for the evil to be arrested by that act could as well have been arrested by the reissue of the notes.³⁷

The legal-tender acts could not be construed to authorize the reissue of notes retired under the Act of 1866. The clear intent of the latter act was to secure a reduction of the currency, and a reissue of the notes retired in accordance with its provisions would nullify the end sought to be attained. In regard to the

³⁶ *Loc cit.*, pp. 2, 3.

³⁷ *Ibid.*, p. 4.

Supreme Court decisions³⁸ it was pointed out that the chief justice was not called upon to pass judgment on the later acts, and hence the decisions had no bearing on the question. It may be here noted that, although, as the majority report points out, the decision quoted does not give warrant for the interpretation placed on it by the secretary, still some legitimate criticism might be made of the words used. The legal-tender circulation was not, it can be safely asserted, even at the time of its issue, regarded as a "permanent" circulation, but as a temporary resource for the pressing exigencies of the time. The National Banking Act of February 25, 1863, was entitled "An act to provide a national currency," thus showing that a permanent national currency was not yet in existence, and provided a permanent substitute for the legal-tender notes when they should have been paid.³⁹

The crucial point of difference in the two reports is as to the intent of the Act of April 12, 1866. What was meant by "retiring" notes? Was the reduction intended to be permanent or temporary? When the circumstances under which the act was passed are taken into consideration, it seems clear that a permanent reduction was intended. The recommendation of Secretary McCulloch in 1865, promptly followed by the resolution of the House of Representatives indorsing the secretary's views, led to the introduction of a measure in Congress to enact them into law. The act, as finally passed April 12, 1866, while far from supporting fully the desires of the secretary, was nevertheless a step in the direction advocated by him—namely, the reduction of the currency as a means toward resuming specie payments, and the funding of all short-time obligations of the government. The bill which, as originally introduced, provided for the funding of all obligations of the government, whether bearing interest or not, was, as we have already seen, amended by a provision that

³⁸ See also *Veazie Bank vs. Fenno*, 8 *Wallace*, 537, in addition to case previously cited. The expression there given is similar to, but not quite so pronounced as in, *Bank vs. Supervisors*.

³⁹ 12 *Statutes at Large*, p. 665. The act was revised and became law on June 3, 1864, retaining the same title (13 *Statutes at Large*, p. 99).

only a limited amount of United States notes should be retired. The retirement of this amount, however, was to be as complete and permanent as the retirement of any of the other obligations—as of the compound interest notes, or of the certificates of indebtedness. The clause forbidding any increase of the public debt by the operation was a positive prohibition of their later reissue. A reissue would rob the act of power to effect a reduction of the currency, and thus defeat its purpose.

With this interpretation of the Act of 1866, the claim that \$356,000,000 of United States notes constituted a minimum beyond which the secretary could reissue at pleasure up to \$400,000,000 becomes untenable. The retirement of the notes had been effected by an exchange for bonds. If, then, the notes should be reissued, both notes and bonds would be outstanding, and the public debt would have been increased.

The annual report of the secretary of the treasury, made December 2, 1872, contained no allusion to the recent reissue, but recommended that “the power to change the volume of paper in circulation, within limits established by law, should remain in the Treasury Department.”⁴⁰ The annual movement of crops, he said, demanded an increase in the volume of the currency, which the banks should not have the power to exercise.⁴¹

The resolution of the House and Senate, which have just been recited and discussed above, were subsequent to this recommendation, and the majority report of the Senate Finance Committee was a clear denial that the secretary possessed the power claimed. No specific prohibition was passed, since it was generally understood that the right of reissue did not exist,⁴² and that the secretary would not again exercise it. In view, however, of the later action of the secretary, it was unfortunate that definitive legislation was not enacted to prevent a recurrence of this arbitrary action. In the Senate afterward Mr. Boutwell argued that the inaction of Congress was a virtual assent to the secretary's

⁴⁰ *Treasury Report*, 1872, p. xx.

⁴¹ *Ibid.*, pp. xx, xxi.

⁴² *New York Commercial and Financial Chronicle*, January 1, 1873; *New York Nation*, January 9, 1873.

authority, and even Mr. Sherman admitted that there was ground for it.⁴³

The financial effect of the treasury action was not wholesome. The reissue had been made by purchasing \$5,000,000 of bonds, for payment of which United States notes had been issued in excess of the \$356,000,000 then outstanding. Five million dollars of gold was also sold for United States notes. The notes received in payment for the gold were placed on deposit with the New York City Banks, so that by the two operations \$10,000,000 had been added to the bank reserves.⁴⁴

Temporary relief was thus afforded, but the situation soon became aggravated. The secretary began almost immediately to withdraw from the banks the greenbacks received from the sale of the \$5,000,000 gold, and also to withdraw from circulation the greenbacks reissued in payment of bonds. By January 4, 1873, all the bank deposits had been withdrawn, and about two and one-half millions of the reissued notes. This unsettled the money market and the stringency became more severe than before.⁴⁵ The debt statements show the amount of expansion and the process of retirement to have been as follows :

October 1, 1872	\$356,000,000
November 1, 1872	360,566,764
December 1, 1872	358,051,256
January 1, 1873	358,557,907
February 1, 1873	358,013,836
March 1, 1873	356,000,000

In March, 1873, Secretary Boutwell resigned and entered the Senate. Assistant Secretary Richardson succeeded him in the Treasury Department. Mr. Richardson had been an ardent advocate of the theory that the government could reissue greenbacks at pleasure, up to \$400,000,000. As seen above, it was he who ordered the reissue in October, 1872, although Secretary Bout-

⁴³ *Congressional Record*, Forty-third Congress, First Session, Vol. II, Part 1, pp. 704, 705.

⁴⁴ *Commercial and Financial Chronicle*, November 11, 1872; *Nation*, January 9, 1873.

⁴⁵ *Nation*, January 2, 1873; *Chronicle*, November 16, December 7, and 21, 1872.

well subsequently approved it. In the closing months of 1872, in a published statement, he asserted:

Between that amount [\$356,000,000] and the four hundred millions authorized by law, the issue of the reserve of forty-four millions of dollars is left to the discretion of the secretary of the treasury.⁴⁶

In the same place he pointed out that during the month of September, 1869, about one and one-half millions of United States notes were issued from the reserve to redeem an equal amount of 3 per cent. demand certificates which were suddenly presented to the Treasury for redemption. They were restored to the reserve, he said, in two weeks. No evidence of this reissue appeared in the monthly debt statement for October, 1869.

It remained to be seen whether the new secretary would accept the report of the Senate Finance Committee and the opinion of the business world in regard to such reissues, or adhere to his own point of view. The debt statement for April 1, 1873, showed an increase of United States notes of \$2,509,047. This was issued to meet current expenditures, made necessary by congressional appropriations.⁴⁷ By June 1 the amount was again down to \$356,000,000. Enough had been done to indicate his attitude on the question.

No further change in the amount of United States notes was made until the panic which occurred in the autumn of 1873. The failure of many business institutions brought a demand for Treasury relief in the form of reissue of greenbacks. The previous instances of Treasury interference were seized upon as precedents for this demand. On September 20, 1873, the New York Stock Exchange was closed. Secretary Richardson announced that the treasury would purchase \$10,000,000 of bonds at noon, but only about two and one-half millions were offered.⁴⁸

On September 21 President Grant and Secretary Richardson held a conference in New York upon the financial situation.

⁴⁶ *Practical Information concerning The Public Debt of the United States with the National Banking Laws* (2d ed., Washington, 1873), p. 40.

⁴⁷ *Nation*, March 20, 1873.

⁴⁸ *New York Chronicle*, September 27, 1873.

Representatives of Wall Street recommended that the forty-four million "reserve" of United States notes be placed in the New York banks. The president and secretary were both opposed to this, and the announcement was finally made that the Treasury would purchase bonds in unlimited amount at not more than par in gold. Doubts as to constitutionality, it was said, prevented placing the forty-four millions at the disposal of the banks, but if the present policy did not give relief, the notes would be reissued despite the unconstitutionality.⁴⁹

On September 22 nearly three and one-half millions of bonds were purchased, and nearly six millions of greenbacks were paid out in exchange for legal-tender certificates.⁵⁰ On September 23, \$3,205,200 of bonds were purchased, and \$1,322,000 of legal-tender certificates redeemed.⁵¹ On September 25 the secretary announced that no more bonds would be purchased; that all necessary relief had been given to legitimate business; that no part of the forty-four million reserve had been trenced upon; but he was quoted as saying that he would

use it to a very limited extent, if it should become necessary to do so, not for the purpose of inflating the currency, but to pay ordinary expenses, with an intention of restoring the amount as soon as circumstances will allow.⁵²

At that date the Treasury had paid out for bonds purchased and certificates redeemed about twenty-four millions of currency.⁵³

The efforts of the Treasury to afford relief to the money market were comparatively futile, if not indeed positively harmful.⁵⁴ Most of the greenbacks disbursed by the Treasury went to the savings banks, where they were hoarded, and had small effect in allaying the panic.⁵⁵ The rate on call loans advanced steadily, and from September 20 to September 27, the week in which the Treasury made its disbursements of currency, there

⁴⁹ *Springfield Republican*, September 22, 1873.

⁵⁰ *Ibid.*, September 23, 1873.

⁵¹ *Chronicle*, September 27, 1873.

⁵² *Springfield Republican*, September 26, 1873.

⁵³ *Chronicle*, September 27, 1873.

⁵⁴ Kinley, *The Independent Treasury*, p. 189.

⁵⁵ *Chronicle*, October 11, 1873.

were no rates quoted on call loans.⁵⁶ In his annual report the secretary stated that, although the currency paid out by the Treasury strengthened the savings banks and checked the general alarm to some extent, the disturbance of business "could not be avoided by any amount of currency which might be added to the circulation."⁵⁷

This report, dated December 2, did not make mention of the fact that an increase in the volume of United States notes had been made. Indeed, the statement was made that at the time purchase of bonds ceased no part of the forty-four million reserve had been issued.⁵⁸ The debt statements for November and December showed, however, that nearly \$11,000,000 increase in United States notes had been made. The bond purchases had been carried to such an extent that the currency balance had been exhausted, and issues had been made from the "reserve" to meet ordinary expenditures, which had, since the panic, exceeded the revenue. It was pointed out that, had the Treasury retained its currency instead of purchasing bonds, the humiliating necessity of a reissue of greenbacks would not have occurred.⁵⁹

The increase in United States notes appears as follows in the monthly debt statements:

October 1, 1873	\$356,000,000
November 1, 1873	360,952,206
December 1, 1873	366,922,018
February 1, 1874	381,715,437
March 1, 1874	382,000,000

The experience afforded by the above incident runs counter to Secretary Shaw's opinion that it is wise to grant discretionary authority to the Treasury to enter the money market as a regulative factor. While the ineffectiveness of Treasury action to afford relief was demonstrated, the evil results were also apparent. An addition of \$26,000,000 had been made to the irredeemable paper currency of the country, and, to this extent, the

⁵⁶ *Chronicle*, September 20 and 27, 1873.

⁵⁷ *Treasury Report*, 1873, p. xvi.

⁵⁸ *Ibid.*, p. xv.

⁵⁹ *Springfield Republican*, October 3, 1873.

results of the Act of April 12, 1866, had been nullified. There is evidence that Secretary Richardson, although believing in the legality of the reissues—as we have seen—doubted the wisdom of reissuing in the fall of 1873.⁶⁰ But, feeling that the power of discretion was his, he yielded to pressure brought to bear upon him. Such action was distinctly injurious, and, in the light of this precedent, the opportunity for such a blunder should not be allowed to occur again. Neither is there sufficient ground for the statement that no secretary in the future would ever make an improper exercise of such authority. Politics in the United States is still too uncertain to predict the action of any secretary whom we may have in the future. While a rehabilitation of the crude and unintelligent fiat money doctrine is hardly conceivable, the silver agitation of 1896 is so near as to deprive us of any assurance that the financial education of the country has gone far enough to prevent a recurrence of monetary delusions. Unreasoning hostility to banks, which has been a striking feature of the political and financial history of the United States, has not altogether passed away, and the probability that the future will bring us a secretary of the treasury who will conceive the interests of the banks to be inimical to the interests of the people is as great as the probability that we shall have one who is subservient to the banks.

That there are defects in our currency system is patent. The problem of providing for an excess of revenues over expenditures—which has often occurred in our history—has never been satisfactorily solved. The receipts from customs duties, amounting in 1906 to approximately three hundred and five million dollars, cannot, under present provisions of the law, be deposited in national banks. Some means should be provided by which this money can find an outlet into the channels of trade. But this is an argument for revision of the sub-treasury law, not for granting autocratic power to the secretary of the treasury. There is need for a greater element of elasticity in our currency to meet the seasonal demands for movement of crops. It should

⁶⁰ *Springfield Republican*, September 22 and 23, 1873.

be carefully noted, however, that this seasonal demand is not merely for increased note circulation, but for loans in the form of deposit credits. Instead of contenting himself with recommending a revision of laws which the business needs of the country have long since outgrown, Mr. Shaw asks for power to control the banks in the regulation of their loans, accumulation of reserves, and in the contraction and expansion of their note circulation. Here the question forces itself upon one: To whom should this power be given? To an independent, irresponsible treasury official, or to the banking institutions of the country which are in close touch with business conditions? Is not the Treasury *ex natura* in a position where it cannot possibly know the banking needs of the country, since it is not in contact with the world of trade? The words of Professor Dunbar on this point are worth quoting:

It is, in fact, one of the great services rendered by the national banking system that, for a most critical quarter-century, it carried note issue and deposit banking side by side throughout the greater part of the country, under the management of a class of remarkably sound institutions, giving to the community many of the benefits of free banking with the minimum of its risks. As a substitute for this system, the issue of notes by the Treasury is as little to the purpose as the striking of coins by the mint; nor is there any machinery by which the operations of the Treasury can be made to perform the desired office. Happily, those operations are quite distinct from the commercial movement of the country, and are unsuited by their nature for any closer connection with it, even if such connection were expedient.⁶¹

There must, it is true, be allowed to the secretary a certain degree of discretion. If for instance, the price of bonds is fixed by Congress, he should be allowed to determine the rate of interest they shall bear; if the interest rate is fixed, he should be given discretion as to the price of the bonds. Of course, if the secretary is to undertake the task of regulating the monetary situation of the country, he should have increased power. But the assumption of such a task is not the function of the Treasury. "Actual experience justifies the statement that the American people hold the secretary of the treasury quite largely responsible for financial

⁶¹ *Quarterly Journal of Economics*, July, 1887, p. 413.

conditions," says Mr. Shaw.⁶² If this be true—which is to be strongly doubted—it is due largely to the practice of the present secretary during his incumbency in office. That a proposition should be gravely advanced by a secretary of the treasury to make himself the dictator of the financial interests of the country is astonishing. It seems, however, to be only a somewhat radical expression of the present tendency toward centralization of powers at Washington, but one which, fortunately, stands small chance of encouragement from any source.

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⁶² *Treasury Report*, 1906, p. 54.